IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMM. FOR JUDGMENT NO. 712 OF 2003

IN

SUMM.SUIT NO.1354 OF 2003

Parag Ramesh Mehta .. Plff

versus

Vijay Pravin Kachalia .. Deft

Mr V.J.Mehta i.b D.Mehta for Plff

Mr P.M.Shah for Deft

CORAM : D.G. KARNIK, J

DATED : 25th April 2005.

P.C:-

1. Heard learned counsel for the parties. This Summons for Judgment is taken out by the plaintiff in a suit filed by it for the recovery of the principal amount of Rs.85,000/- under a Bill of Exchange dated 3rd April, 2000 and interest thereon. The plaintiff lent and advanced to the defendant a sum of Rs.85,000/- and the defendant executed a bill of Exchange copy of which is annexed as Exhibit A to the plaint. The defendant was the drawer and the bill which had not been accepted and therefore the

defendant as a drawer is liable to pay the principal amount. Signature on the bill of Exchange is not denied by the defendant.

2. By an advocate's notice dated 2nd September, 2001 the plaintiff demanded the payment. By a reply dated 8th September, 2001 the defendant denied having received the friendly loan of Rs.85,000/-. However, in the affidavit in reply the defendant has made out a case that the defendant has repaid the loan to the plaintiff by means of an adjustment and according to the defendant, the adjustment is recorded in the handwriting of the plaintiff's father. I have perused the copy annexed to the affidavit of the alleged writing amounting to adjustment. It only show some calculations, and in no way shows adjustment of loan given to the plaintiff. So assuming that the writing is executed by the plaintiff's father and further assuming that the plaintiff's father had an authority (of course the writing as well as the authority is denied by the plaintiff) in my view, the writing does not show any repayment by adjustment.

3. The stand taken by the defendant is inconsistent. In the reply to the notice, he denies having received

the loan. In the affidavit in reply he does not deny the receipt but states that he has repaid the loan to plaintiff's father by means of adjustment. No explanation is offered regarding the inconsistent stands. The defence raised by the defendant is not a defence of substance and is totally uncreditworthy. In the circumstances, the defendant can only be granted conditional leave to defend the suit subject to depositing the principal sum. I am however, not inclined to direct the defendant to deposit the interest firstly because the Bill of Exchange does not specify any interest and the rate claimed by the plaintiff in the suit is different than the rate claimed in the notice.

4. The defendant is granted conditional leave to defend the suit subject to his depositing in the Court a sum of Rs.85,000/- within four weeks. On such deposit, the plaintiff is permitted to withdraw the same by furnishing security to the satisfaction of the Prothonotary and Senior Master. On failure of the defendant to deposit the amount, the plaintiff shall have the liberty to apply. On deposit of the money, suit shall stand transferred to the list of commercial causes. The defendant to file the written statement

within six weeks.

D.G.KARNIK, J